THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.1.2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.11041 of 1997

S.Dharmaraj .. Petitioner

vs.

1. The Chairman and Disciplinary Authority
   Pandyan Grama Bank,
   Administrative Office P.B.6,
   71, Kandapuram Street,
   Virudhunagar - 626 001.

2. The Board of Directors,
   Pandyan Grama Bank,
   Administrative Office P.B.6,
   71, Kandapuram Street,
   Virudhunagar - 626 001. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus as stated therein.

For petitioner : Mr.P.Thangaraja
for Mr.W.M.Abdul Majeed

For respondents : Mr.K.Srinivasamoorthy
for M/s.N.G.R.Prasad

O R D E R

The Writ Petition has been filed praying for the issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the proceedings made in AIVD/DP/116/11-0-8/90-91/1284/94-95, dated 27/28.2.95, as confirmed by the Appellate Authority, Chairman, Pandyan Grama Bank, Administrative Office P.B.6, 71, Kandapuram Street, Virudhunagar-1 made in his proceedings No.AIVD/DP/739/96-97, dated 30.1.97 and quash the same and to direct the respondents to reinstate the petitioner in service with attendant benefits and backwages.

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The brief facts of the case, as stated in the affidavit filed in support of the writ petition, are as follows:

2. The petitioner had been appointed as a Clerk, on 4.6.1977, at Pandyan Grama Bank Branch at Idinthakarai, Tirunelveli District. On 1.8.1984, he was promoted as an Officer and posted at Kalkurichi Branch as Additional Officer and later, transferred to various other places. While the petitioner was working as Additional Officer at Ragunathapuram, he was served with a charge memo, dated 29.10.1990, containing 10 charges. The petitioner had submitted his reply to the charges. A Departmental Enquiry Officer was appointed to conduct the departmental enquiry, based on the alleged charges.

3. After the enquiry was conducted, an enquiry report had also been submitted. The Enquiry Officer had given his findings that except charge Nos.4 and 6 (a,b & d), other charges had been proved. Based on the said findings, a show cause notice, dated 14.1.1997, was served on the petitioner by the first respondent, agreeing with the enquiry findings and proposing to impose a penalty of dismissal from service and asking the petitioner to show cause as to why he should not be dismissed from service, in terms of Regulation 30(1) (f) of Pandyan Grama Bank (Staff) Service Regulations, 1980. The petitioner had submitted his reply to the show cause notice, dated 29.10.1990. However, the first respondent, by his proceedings AIVD/DP/116/11-0-8/90-91/1284/94-95, dated 27/28.2.1995, had confirmed the proposed penalty of dismissal. The petitioner had preferred an appeal before the Board of Directors and the said appeal was disposed of, on 30.1.1997, holding that there were no valid reasons to interfere with the punishment of dismissal awarded by the Disciplinary Authority. Therefore, the petitioner has preferred the present writ petition.

4. The petitioner has further stated that in view of order of dismissal from service, dated 30.1.1997, he has been without employment from 28.2.1995. Some of the main contentions raised by the petitioner are that the order of dismissal from service has been passed without any evidence and that the charges alleged in the charge sheet, dated 29.10.1990, were vague. The petitioner had also contended that the investigation report had not been supplied to him and that the petitioner was not given sufficient opportunity to cross-examine the persons, whose statements against the petitioner were recorded. The petitioner had also stated that the first respondent, who was the Disciplinary Authority, was also the Chairman of the Board of Directors, which had heard the appeal and it was contrary to the principles of natural justice. The petitioner had also stated that the Enquiry was not conducted properly and that all the charges were not proved and once the

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findings of the Enquiry Officer were not accepted by the Disciplinary Authority, he ought to have given reasons for his decision. There were only certain irregularities, which were found against the petitioner and there was no misappropriation of the funds of the bank. The Disciplinary Authority had not applied his mind while accepting the findings of the Enquiry Officer. Even though some of the serious charges had not been proved, the punishment rendered to the petitioner was based on the principle of preponderance of probabilities.

5. In the counter affidavit filed on behalf of the respondents, it is stated that the Enquiry Officer had conducted 15 sittings to enquire into the charges. During the enquiry, 77 Management Exhibits were marked and 3 witnesses were examined. The witnesses were also cross-examined on behalf of the petitioner. During the enquiry the petitioner had not raised the issue with regard to the vagueness of the charges. The Enquiry Officer submitted his findings based only on the evidence available. The final order was passed by the Disciplinary Authority after careful consideration of the materials on record and based on the findings of the Enquiry Officer. While participating in the enquiry, the petitioner had not requested for the production of the investigation report as alleged by him. Since the proved charges were serious in nature, including non-creation of assets, mock purchase, illegal gratification, causing misappropriation of forged withdrawal, breach of trust and dishonesty and since there were no mitigating circumstances to grant a lesser punishment, an order of removal from service had been issued.

6. Heard the learned counsel for the petitioner as well as the respondents.

7. The learned counsel appearing on behalf of the petitioner had placed reliance on the following cases to support of his contentions.

7.1. In STATE OF U.P. Vs. SHATRUGHAN LAL & ANR., (JT 1998 (6) SC 55), the Supreme Court has held that "one of the principles of natural justice is that a person against whom an action is proposed to be taken has to be given an opportunity of hearing. This opportunity has to be an effective opportunity and not a mere pretence. In departmental proceedings where charge-sheet is issued and the documents which are proposed to be utilised against that person are indicated in the charge sheet but copies thereof are not supplied to him in spite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was provided to him. Preliminary inquiry which is conducted invariably on the back of the delinquent employee may, often, constitute the whole basis of

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the charge-sheet. Before a person is, therefore, called upon to submit his reply to the charge sheet, he must, on a request made by him in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined at the departmental trial. Merely saying that the respondent could have inspected the documents at any time is not enough. He has to be informed that the documents, of which the copies were asked for by him may be inspected. The access to record must be assured to him. the respondent was not afforded an effective opportunity of hearing, particularly as the appellant failed to establish that non-supply of the copies of statements recorded during preliminary enquiry had not caused any prejudice to the respondent in defending himself.

7.2. In MANAGING DIRECTOR, ECIL, HYDERABAD Vs. B.KARUNAKAR (1993(3) SLJ 193 (SC)), the Supreme Court has held that "Article 311 (2) applies only to members of the civil services of the Union or an all-India service or a civil service of a State or to the holders of the civil posts under the Union or a State. In the matter of all punishments both Government servants and others are governed by their service rules. Whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded, and when the Inquiry Officer is not the disciplinary authority the delinquent employee will have the right to receive the Inquiry Officer's report notwithstanding the nature of the punishment. Since it is the right of the employee to have the report to defend himself effectively, and he would not known in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Since to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It

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amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

7.3. In AMARNATH CHOWDHURY Vs. BRAITHWAITE AND CO. LTD., AND OTHERS ((2002) 2 SCC 290), the supreme Court has held as follows:

> "6. One of the principles of natural justice is that no person shall be a judge in his own cause or the adjudicating authority must be impartial and must act without any kind of bias. The said rule against bias has its origin from the maxim known as nemo debet esse Judex in Propria Causa, which is based on the principle that justice not only be done but should manifestly be seen to be done. This could be possible only when a judge or an adjudicating authority decides the matter impartially and without carrying any kind of bias. Bias may be of different kind and form. It may be pecuniary, personal or there may be bias as to the subject-matter etc. In the present case, we are not concerned with any of the aforesaid forms of bias. What we are concerned with in the present case is whether an authority can sit in appeal against its own order passed in the capacity of Disciplinary Authority. In Financial Commissioner (Taxation) Punjab and Ors. v. Harbhajan Singh [1(1996)9 SCC 281] it was held that the Settlement Officer has no jurisdiction to sit over the order passed by him as an Appellate Authority. In the present case, the subject-matter of appeal before the Board was whether the order of removal passed by the Disciplinary Authority was in conformity with law. It is not disputed that Shri S. Krishnaswami, the then Chairman-cum-Managing Director of the Company acted as a Disciplinary Authority as well as an Appellate Authority when he presided over and participated in the deliberations of the meeting of the Board while deciding the appeal of the appellant. Such a dual function is not permissible on account of established rule against bias. In a situation where such a dual function is discharged by one and the same authority, unless permitted by an act of legislation or statutory provision, the same would be contrary to rule against bias.

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> Where an authority earlier had taken a decision, he is disqualified to sit in appeal against his own decision, as he already prejudged the matter otherwise such an appeal would be termed an appeal from Caesar to Caesar and filing of an appeal would be an exercise in futility. In that view of the matter, in the present case, fair play demanded that Shri Krishnaswami, the then Chairman-cum-Managing Director of the Company ought not to have participated in the deliberations of the meeting of the Board when the Board heard and decided the appeal of the appellant."

7.4. In DIRECTOR (MARKETING) I.O.C. LTD., Vs. SANTOSH KUMAR (2006-II-LLJ-1043 (SC)) the Supreme Court has held that "a perusal of the order passed by the Appellate Authority would only reveal the total non-application of mind by the Appellate Authority. We, therefore, have no other option except to set-aside the order passed by the Disciplinary Authority and the Appellate Authority and remit the matter for fresh disposal to the Disciplinary Authority. The Disciplinary Authority shall consider the detailed representation made by the respondent and also consider the detailed report of the Enquiry Officer and the records placed before him in its proper perspective and decide the matter afresh on merits."

8. Per contra, the learned counsel appearing on behalf of the respondents has placed reliance on the following decisions:

8.1. In CHANDRAMA TEWARI Vs. UNION OF INDIA (AIR 1988 SC 117), the Supreme Court has held that it is now well settled that if copies of relevant and material documents including the statement of witnesses recorded in the preliminary enquiry or during investigation are not supplied to the delinquent officer facing the enquiry and if such documents are relied in holding the charges framed against the officer, the enquiry would be vitiated for the violation of principles of natural justice. Similarly, if the statement of witnesses recorded during the investigation of a criminal case or in the preliminary enquiry is not supplied to the delinquent officer that would amount to denial of opportunity of effective cross-examination. It is difficult to comprehend exhaustively the facts and circumstances which may lead to violation of principles of natural justice or denial of reasonable opportunity of defence. This question must be determined on the facts and circumstances of each case. While considering this question it has to be borne in mind that a delinquent officer is entitled to have copies of material and relevant documents only which may include the copy of statement of witnesses recorded

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during the investigation or preliminary enquiry or the copy of any other document which may have been relied in support of the charges. If a document has no bearing on the charges or if it is not relied by the enquiry officer to support the charges, or if such document or material was not necessary for the cross-examination of witnesses during the enquiry, the officer cannot insist upon the supply of copies of such documents, as the absence of copy of such document will not prejudice the delinquent officer. The decision of the question whether a document is material or not will depend upon the facts and circumstances of each case. The documents not being relevant or material, non-supply of its copy did not amount to violation of the principles of natural justice. No prejudice was caused to the delinquent in cross-examining the concerned Police Officer."

8.2. In STATE OF HARYANA AND ANOTHER Vs. RATTAN SINGH (1982-I-LLJ-46 (SC)), the Supreme Court has held as follows:

> "4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. Ail materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the Courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the Tribunal before the valid finding could be recorded. The 'residium' rule to which counsel for the respondent referred, based upon certain passengers from American jurisprudence does

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not go to that extent nor does the passage from the Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and wordly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainty available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying Squad, is some evidence which has elevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."

8.3. In DISCIPLINARY AUTHORITY-CUM-REGIONAL MANAGER AND OTHERS Vs. NIKUNJA BIHARI PATNAIK ((1996) 9 SCC 69), the Supreme Court has held that "acting beyond one's authority is by itself a breach of discipline and a breach of Regulation 3. It constitutes misconduct within the meaning of Regulation 24. No further proof of loss is really necessary though as a matter of fact, in the instant case there are findings that several advances and overdrawals allowed by the respondent beyond his authority have become sticky and irrecoverable. Just because, similar acts have fetched some profit they are no less blameworthy. It is wrong to characterise them as errors of judgment. It is not suggested that the respondent being a Class-I Officer was not aware of the limits of his authority or of his powers. In spite of instructions by the Regional Office to stop such practice, the respondent continued to indulge in such acts. The Enquiry Officer has recorded a clear finding that the respondent did flout the said instructions and has thereby committed an act of disobedience of lawful orders. Similarly, in spite of reminders, the respondent did not submit "Control Returns" to the Regional Office. All this could not be characterised as errors of judgment and not as misconduct as defined by the Regulations."

8.4. In SUB-DIVISIONAL OFFICER, KONCH Vs. MAHARAJ SINGH (2003-III-LLJ-1080 (SC)), the Supreme Court had observed "by making the order under appeal, the High Court had exceeded its jurisdiction under Article 226 of the Constitution of India, in interfering with the findings arrived at by the enquiring authority, by its reappreciation of the evidence. It pointed out

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that the jurisdiction under that Article was only supervisory and not appellate one."

8.5. In STATE BANK OF INDIA Vs. TARUN KUMAR BANERJEE AND OTHERS (2000-II-LLJ-1373 (SC)), the Supreme Court has held as follows:

> "6. A customer of the Bank need not be involved in a domestic enquiry conducted; as such a course would not be conducive to proper banker-customer relationship and, therefore, would not be in the interest of the Bank. Further, when money was secured a prudent banker would deposit the same in the account of the customer complaining of loss of money and, therefore, non- production of money also would not be of much materiality. When in the course of the domestic enquiry no reliance was placed an the so-called confessional statement made by the first respondent, then non-production of the same is also of no significance. Thus, in our opinion, these circumstances are irrelevant and the Tribunal could not have placed reliance on the same to reach the conclusion it did and, therefore, the learned Single Judge was justified in interferring with the same. In the writ appeal the learned Judges of the Division Bench reiterated the view expressed by the Tribunal which we have found to be fallacious."

9. The learned counsel appearing for the respondents had submitted that the Disciplinary Authority, the first respondent herein, did not participate in the meeting of the Board, when the decision was made to render the punishment of dismissal from service on the petitioner. There was sufficient proof, based on records and by the statements of witnesses, to show that the petitioner had intentionally committed the irregularities with a view to commit loss and that the charges have been clearly proved leading to the disciplinary action against the petitioner dismissing him from service, which is the appropriate punishment for the serious irregularities committed.

10. On analysing the rival contentions and based on a perusal of the records placed before this Court, it is clear that the charges against the petitioner were serious in nature. The charges, which have been proved, involve breach of trust and dishonesty involving moral turpitude. The petitioner as the Manager of the bank had been vested with the serious responsibility of safeguarding the assets of the bank. While so, it was inappropriate on his part to have committed breach of such

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trust reposed on him by involving in acts of illegal gratification and misappropriation of the assets of the bank. There is no doubt that such acts of dishonesty and breach of trust should be put down with an iron hand, especially, if it involves a person in the position of the petitioner, being in-charge of a financial institution like the respondent bank. In such a case, no sympathy can be shown and no leniency in punishment can be recommended. This is the view that has emerged from the various decisions rendered by the Supreme Court. The contentions raised on behalf of the petitioner that some of the procedural formalities have not been followed during the enquiry does not gather any support from the evidence available on record. On the other hand, the respondents have denied the allegations made by the petitioner and it has been emphasised by the respondents that all the necessary procedures were followed and the principles of natural justice were fully adhered to. Even if it is assumed that some trivial formalities have not been followed during the process of enquiry and thereafter, unless the petitioner could show that substantial prejudice had been caused to him, this Court would be reluctant to interfere. In such circumstances, the claims made by the petitioner cannot be sustained.

11. In such view of the matter, this writ petition is liable to be dismissed. Therefore, the writ petition stands dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

To:

1. The Chairman and Disciplinary Authority
   Pandyan Grama Bank,
   Administrative Office P.B.6,
   71, Kandapuram Street,
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+ 1 cc to Mr. N. G. R. Prasad, Advocate, SR No.5302

+ 1 cc to Mr. W.M. Adbul Majeed, Advocate, SR No.53790

LA(CO)
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